

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

18 Cr. 834 (PAE)

-v-

ORDER

DENARD BUTLER,
Defendant.

PAUL A. ENGELMAYER, District Judge:

The Court has reviewed the renewed application for compassionate release filed on behalf of defendant Denard Butler, Dkt. 606 (“Def. Mem.”), and the Government’s letter in opposition, Dkt. 607 (“Opp’n”).

The Government argues at the threshold that Butler’s motion should be denied because he has failed to exhaust his administrative remedies. Opp’n at 1. However, as in the Court’s previous Order, it is unnecessary to decide whether Butler’s properly exhausted his administrative remedies because the Court concludes, on the merits, that substantially for the same reasons set forth in the Court’s prior Order, a reduction of Butler’s sentence is not supported by the “factors set forth in section 3553(a).” 18 U.S.C. § 3582(c)(1)(A).

Butler has now served approximately 30 months of the 60-month sentence imposed. *See* Def. Mem. at 2. In the Court’s Order 15 months ago denying Butler’s motion for compassionate release, the Court found that release at that early point “would disserve the[] important § 3553(a) factors,” because Butler “continues to pose a danger to the community and . . . the § 3553(a) factors do not support a reduction of sentence.” Dkt. 461 (“Order”) at 6. The overriding reason for the denial of Butler’s compassionate release—that he had served only a modest portion of the term of imprisonment that the Court determined was warranted under the 18 U.S.C. § 3553(a)

factors, viewed in totality—remains persuasive today. The Court acknowledges that Butler suffers from asthma and bradycardia, a heart condition, which put him at greater risk were he to contract COVID-19. Def. Mem. at 3. But this factor no longer can be claimed to merit significant weight in the § 3553(a) calculus as to Butler. That is because, since February 2021, Butler has had the opportunity to receive the Moderna COVID-19 vaccine, which would have dramatically reduced his risk from the virus, but, on February 25, 2021, Butler refused the vaccine, and since then has not changed course. Opp'n at 1–2. Actions have consequences. Butler cannot reasonably claim that his increased risk exposure to COVID-19 warrants a sentence reduction when he has declined to take the one action that—incarcerated or not—would materially reduce the risks to him from COVID-19. *See, e.g., United States v. Bullock*, No. 18-CR-528 (JMF), 2021 WL 1550424, at *1 (S.D.N.Y. Apr. 20, 2021) (noting that defendant “cannot satisfy his burden of showing that relief is warranted based on the fact that he was offered, and he refused, a COVID-19 vaccine”). With the risks presented to him by COVID-19 largely removed from the equation, Butler cannot point to any factor that could conceivably justify a 50 percent reduction that the Court determined at sentencing to be just in his case. The Court thus denies Butler’s request for release at this time under § 3582(c).

That said, the Court reiterates that—although Butler’s rejection of the vaccine deprives him of the ability to credibly claim to fear grave medical consequences from COVID-19—the unexpected hardship presented by the pandemic, and the severe conditions it has occasioned at USP Allenwood, would justify some reduction of the sentence imposed, albeit well short of the reduction Butler seeks. It is premature to measure the extent of that justified reduction, with the pandemic still a factor today. The Court will entertain a renewed application for release or reduction of sentence from Butler later in his prison term. Accordingly, the denial of Butler’s application is, again, without prejudice to his right to bring a renewed such application.

The Clerk of Court is respectfully directed to terminate the motion pending at docket 606.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: August 11, 2021
New York, New York